

*United States Court of Appeals
for the Second Circuit*



**SUPPLEMENTAL
APPENDIX**

Docket No. **75-1201**

B
P/S

IN THE
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellant.

—v—

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH
N. MARUCA, VINCENT N. CHRISTINA, ANTHONY
R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. McGRATH, ANDREW J.
QUINLAN and THOMAS A. ABBADESSA,

Appellees.

—and—

UNITED STATES OF AMERICA,

Appellant.

—v—

RAYMOND D. MASCIARELLI and LAWRENCE
SCHULTZ,

Appellees.

On appeal from the United States District Court
Northern District of New York

SUPPLEMENTAL APPENDIX FOR APPELLANT,
United States of America

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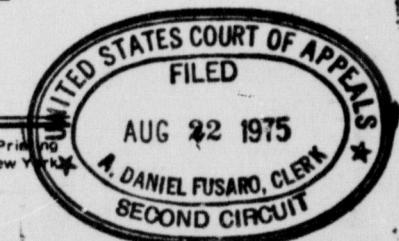


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under one act as opposed to the other? These facts are not in the hearing record and it would take us several weeks to obtain them.

Mr. ECKHARDT. If the gentleman will yield me just a sliver of my time, I would say this, that we considered all of these matters in hearings. We have heard evidence on all of these acts, and we heard evidence on this act last. One reason why certain particular standards were set in the other acts is because the hearing procedure was not nearly as adequate as the hearing procedure in this case for rulemaking.

Mr. Chairman, I submit to the gentleman that we have considered these matters, and we are moving only a slight way in this amended language from the previous language. The previous language gave an absolute preference to the other act. This does not give an absolute preference to the Product Safety Act, but says that the Commission may, after publication in the Federal Register, utilize the Product Safety Act where that is a more appropriate means, in its opinion, of administering the law.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. I thank the gentleman for yielding.

Mr. Chairman, at the time we heard that testimony in the 92d Congress was when we decided to make the Commission use the authority under the transfer acts. That was the conclusion we reached after hearing their testimony. We did not have any such testimony during the markup sessions of this bill.

Mr. ECKHARDT. But we have heard all of these facts discussed. We simply are using our judgment, after an agency has gained a little more maturity, to say that this agency should move toward a greater uniformity, both with respect to the procedure and with respect to the application of standards. That is all we are asking.

Mr. BROYHILL. Mr. Chairman, will the gentleman yield on that point?

Mr. ECKHARDT. I yield to the gentleman from North Carolina.

Mr. BROYHILL. I thank the gentleman for yielding.

Mr. Chairman, I must respectfully disagree. I have seen no analysis of the comparisons of the different authorities. If the gentleman has that, I will appreciate it if he will share it with us on the minority side, if there are some comparisons. If I have overlooked it, then I certainly apologize. But I have not seen it.

Mr. VAN DEERLIN. Mr. Chairman, I yield 3 to 5 minutes to the gentleman from Michigan (Mr. BODHEAD).

Mr. BODHEAD. Mr. Chairman, I think we have pretty well covered the ground here. It seems to me that we have here a good piece of legislation. It has been pretty hotly contested, both in the subcommittee and in the full committee, but I think there are few areas of disagreement and areas that we can work out.

I do not share the concern that they have on the minority side, particularly

with concern to the question of litigation. It seems to me that the amendment that was made in the full committee with respect to litigation; namely, that the Product Safety Commission could engage in civil litigation on its own, was a sound amendment. It is certainly not without precedent. There are certain other independent regulatory agencies that have this power. It produces greater efficiency.

One of the problems with litigation going on over at the Justice Department is that very often the litigation is in a very technical area. The attorneys with the regulatory agency in question are very familiar with the subject matter, and then when the litigation has to be transferred over to the Department of Justice, we have to find then a whole new set of people to familiarize themselves with some very intricate problems and make the same kind of decision that has already been made at the level of the agency.

Mr. Chairman, another advantage, it seems to me, of keeping the power to engage in civil litigation in the Safety Commission itself is the question of uniformity of interpretation. If you have 94 different U.S. attorneys making a decision about what is going to be the Government's position, and engaged in litigation all across the country, you stand a very good chance of having different standards being applied, to the point where businessmen who are being regulated under the law do not know what the law is going to be; whereas, if the decisions are made in one place, in the Product Safety Commission, you have a better chance of getting a uniform interpretation of what the law is. So from the standpoint of the agency and from the standpoint of uniformity, it is a great advantage to have the bill remain in the same form it is in with respect to the point of civil litigation.

Mr. Chairman, I hope the Members will resist the amendment that is undoubtedly going to be offered to change this.

I thank the gentleman from California (Mr. VAN DEERLIN) for offering me this opportunity to express my support of the bill.

Mr. STAGGERS. Mr. Chairman, this bill was introduced in March 1975 as the legislative recommendations of the Consumer Product Safety Commission. Under the Consumer Product Safety Act, the Commission is required to submit legislative recommendations concurrently to the Congress and to the President. As ordered reported by the Interstate and Foreign Commerce Committee H.R. 6844 contains several amendments to the introduced bill, but retains most of the clarifying and strengthening provisions.

The principal purposes of H.R. 6844 are to extend the authorization of appropriations for the Commission, not to exceed \$51 million for fiscal year 1976; \$14 million for the interim period; \$60 million for fiscal year 1977; and \$68 million for fiscal year 1978. Our committee believes these funding levels are conservative, and in line with the amounts appropriated.

H.R. 6844 will also eliminate the regu-

lation of firearms and ammunition, as well as tobacco and tobacco products from the Commission's jurisdiction.

The Commission will be authorized to conduct its own civil litigation, but criminal litigation will continue to be conducted through the Department of Justice.

One of the major provisions of the bill will provide for uniformity of administration on Federal preemption of State and local requirements by amendments to the four major acts administered by the Commission—the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, and the Flammable Fabrics Act.

Mr. VAN DEERLIN. Mr. Chairman, I have no further requests for time.

Mr. McCOLLISTER. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Consumer Product Safety Commission Improvements Act of 1975".

Mr. VAN DEERLIN. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. BERGLAND, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 6844) to amend the Consumer Product Safety Act, and for other purposes, had come to no resolution thereon.

GENERAL LEAVE

Mr. VAN DEERLIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 6844, the bill under consideration, today.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON H.R. 6799, FEDERAL RULES OF CRIMINAL PROCEDURE AMENDMENTS ACT

Mr. MANN submitted the following conference report and statement on the bill (F.R. 6799) to approve certain of the proposed amendments to the Federal Rules of Criminal Procedure, to amend certain of them, and to make certain additional amendments to those rules.

CONFERENCE REPORT (H. REPT. NO. 94-414)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6799) to approve certain of the proposed amendments to the Federal Rules of Crim-

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inal Procedure, to amend certain of them, and to make certain additional amendments to those Rules, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Federal Rules of Criminal Procedure Amendments Act of 1975".

Sec. 2. The amendments proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure which are embraced in the order of that Court on April 22, 1974, are approved except as otherwise provided in this Act and shall take effect on December 1, 1975. Except with respect to the amendment to Rule 11, insofar as it adds Rule 11(e)(6), which shall take effect on August 1, 1975, the amendments made by section 3 of this Act shall also take effect on December 1, 1975.

Sec. 3. The Federal Rules of Criminal Procedure, as amended by the amendments that were proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure which are embraced by the order of that Court on April 22, 1974, are further amended as follows:

(1) Rule 4 is amended by striking out subdivisions (a), (b), and (c); and inserting in lieu thereof the following:

"(a) ISSUANCE.—If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

"(b) PROBABLE CAUSE.—The finding of probable cause may be based upon hearsay evidence in whole or in part."

(2) Rule 4 is further amended by redesignating subdivision (d) as (c).

(3) Rule 4 is further amended by redesignating (e) as (d), and paragraph (3) of such subdivision is amended to read as follows:

"(3) MANNER.—The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address."

(4) Rule 9(a) is amended to read as follows:

"(a) ISSUANCE.—Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the attorney for the government or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons

to the marshal or other person authorized by law to execute or serve it. If the defendant fails to appear in response to the summons, a warrant shall issue."

(5) Rule 1(c) is amended to read as follows:

"(c) ADVICE TO DEFENDANT.—Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

"(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

"(2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

"(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

"(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

"(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement."

(6) Rule 11(c)(1) is amended to read as follows:

"(1) IN GENERAL.—The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

"(A) move for dismissal of other charges; or

"(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

"(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions."

(7) Rule 11(e)(2) is amended to read as follows:

"(2) NOTICE OF SUCH AGREEMENT.—If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report."

(8) Rule 11(e)(3) is amended to read as follows:

"(3) ACCEPTANCE OF A PLEA AGREEMENT.—If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement."

(9) Rule 11(e)(4) is amended to read as follows:

"(4) REJECTION OF A PLEA AGREEMENT.—If the court rejects the plea agreement, the

court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement."

(10) Rule 11(e)(6) is amended to read as follows:

"(6) INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS.—Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel."

(11) Rule 12(e) is amended to read as follows:

"(e) RULING ON MOTION.—A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record."

(12) Rule 12(h) is amended to read as follows:

"(h) EFFECT OF DETERMINATION.—If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any Act of Congress relating to periods of limitations."

(13) Rule 12.1 is amended to read as follows:

"RULE 12.1. NOTICE OF ALIBI

"(a) NOTICE BY DEFENDANT.—Upon written demand of the attorney for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

"(b) DISCLOSURE OF INFORMATION AND WRITNESS.—Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney for the government shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

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(c) CONTINUING DUTY TO DISCLOSE.—If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(d) FAILURE TO COMPLY.—Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

(e) EXCEPTIONS.—For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

(f) INADMISSIBILITY OF WITHDRAWN ALIBI.—Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention."

(14) Rule 12.2(c) is amended to read as follows:

(c) PSYCHIATRIC EXAMINATION.—In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court. No statement made by the accused in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding."

(15) Rule 15(a) is amended to read as follows:

(a) WHEN TAKEN.—Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness."

(16) Rule 15(b) is amended to read as follows:

(b) NOTICE OF TAKING.—The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right."

(17) Rule 15(c) is amended to read as follows:

(c) PAYMENT OF EXPENSES.—Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant and his attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government."

(18) Rule 15(e) is amended by striking out "as defined in subdivision (g) of this rule" and inserting in lieu thereof the following: "as unavailability is defined in Rule 804(a) of the Federal Rules of Evidence".

(19) Rule 15(g) is deleted and subdivision (h) is redesignated as (g).

(20) Rule 16(a)(1)(A) is amended to read as follows:

(A) STATEMENT OF DEFENDANT.—Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

(21) Rule 16(a)(1)(B) is amended to read as follows:

(B) DEFENDANT'S PRIOR RECORD.—Upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(22) Rule 16(a)(1)(D) is amended to read as follows:

(D) REPORTS OF EXAMINATIONS AND TESTS.—Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial."

(23) Rule 16(a)(1)(E) is deleted.

(24) Rule 16(b)(1)(A) is amended to read as follows:

(A) DOCUMENTS AND TANGIBLE OBJECTS.—If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial."

(25) Rule 16(b)(1)(B) is amended to read as follows:

(B) REPORTS OF EXAMINATIONS AND TESTS.—If the defendant requests disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony".

(26) Rule 16(b)(1)(C) is deleted.

(27) Rule 16(c) is amended to read as follows:

(c) CONTINUING DUTY TO DISCLOSE.—If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material."

(28) Rule 16(d)(1) is amended to read as follows:

(1) PROTECTIVE AND MODIFYING ORDERS.—Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal."

(29) Rule 17(f)(2) is amended to read as follows:

(2) PLACE.—The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties".

(30) Rule 20(d) is amended to read as follows:

(d) JUVENILES.—A juvenile (as defined in 18 U.S.C. § 5031) who is arrested, held, or present in a district other than that in which he is alleged to have committed an act in violation of a law of the United States not punishable by death or life imprisonment may, after he has been advised by counsel and with the approval of the court and the United States attorney for each district, consent to be proceeded against as a juvenile delinquent in the district in which he is arrested, held, or present. The consent shall be given in writing before the court but only after the court has apprised the juvenile of his rights, including the right to be returned to the district in which he is alleged to have committed the act, and of the consequences of such consent."

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(31) Rule 32(a)(1) is amended to read as follows:

"(1) IMPOSITION OF SENTENCE.—Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court."

(32) Rule 32(c)(1) is amended to read as follows:

"(1) WHEN MADE.—The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

"The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time."

(33) Rule 32(c)(3)(A) is amended to read as follows:

"(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report."

(34) Rule 32(c)(3)(D) is amended to read as follows:

"(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs."

(35) Rule 43(b)(2) is amended to read as follows:

"(2) after being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom."

And the Senate agree to the same.

JAMES E. MANN,
RAY THORNTON,
MARTIN A. RUSSO,
CHARLES E. WIGGINS,
HENRY J. HYDE.

Managers on the Part of the House.

JOHN L. McCLELLAN,
PHILIP A. HART,
JAMES ABOUREK,
ROMAN L. Hruska,
HUGH SCOTT.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amend-

ment of the Senate to the bill (H.R. 6799) to approve certain of the proposed amendments to the Federal Rules of Criminal Procedure, to amend certain of them, and to make certain additional amendments to those Rules, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House and Senate conferees met twice to resolve the differences between the House and Senate versions of H.R. 6799. As a result of these meetings, the Managers on the part of the House and the Managers on the part of the Senate have resolved all differences between the two versions of H.R. 6799.

The conferees agreed to several technical, perfecting and nonsubstantive changes in the Senate amendment. In addition, the conferees made a few technical and nonsubstantive changes in the Senate amendment. The Conference, besides adopting these technical, perfecting and nonsubstantive changes, adopted the following provisions:

Rule 4(e)(3)

Rule 4(e)(3) deals with the manner in which warrants and summonses may be served. The House version provides two methods for serving a summons: (1) personal service upon the defendant, or (2) service by leaving it with someone of suitable age at the defendant's dwelling and by mailing it to the defendant's last known address. The Senate version provides three methods: (1) personal service, (2) service by leaving it with someone of suitable age at the defendant's dwelling, or (3) service by mailing it to defendant's last known address.

The Conference adopts the House provision.

Rule 11(c)

Rule 11(c) enumerates certain things that a judge must tell a defendant before the judge can accept that defendant's plea of guilty or nolo contendere. The House version expands upon the list originally proposed by the Supreme Court. The Senate version adopts the Supreme Court's proposal.

The Conference adopts the House provision.

Rule 11(e)(1)

Rule 11(e)(1) outlines some general considerations concerning the plea agreement procedure. The Senate version makes nonsubstantive change in the House version.

The Conference adopts the Senate provision.

Rule 11(e)(6)

Rule 11(e)(6) deals with the use of statements made in connection with plea agreements. The House version permits a limited use of pleas of guilty, later withdrawn, or nolo contendere, offers of such pleas, and statements made in connection with such pleas or offers. Such evidence can be used in a perjury or false statement prosecution if the plea, offer, or related statement was made under oath, on the record, and in the presence of counsel. The Senate version permits evidence of voluntary and reliable statements made in court on the record to be used for the purpose of impeaching the credibility of the declarant or in a perjury or false statement prosecution.

The Conference adopts the House version with changes. The Conference agrees that neither a plea nor the offer of a plea ought to be admissible for any purpose. The Conference-adopted provision, therefore, like the Senate provision, permits only the use of statements made in connection with a plea of guilty, later withdrawn, or a plea of nolo contendere, or in connection with an offer of a guilty or nolo contendere plea.

Rule 12.2(e)

Rule 12.2(e) deals with court-ordered psychiatric examinations. The House version provides that no statement made by a de-

fendant during a court-ordered psychiatric examination could be admitted in evidence against the defendant before the trier of fact that determines the issue of guilt, prior to the determination of guilt. The Senate version deletes this provision.

The Conference adopts a modified House provision and restores to the bill the language of H.R. 6799 as it was originally introduced. The Conference-adopted language provides that no statement made by the defendant during a psychiatric examination provided for by the rule shall be admitted against him on the issue of guilt in any criminal proceeding.

The Conference believes that the provision in H.R. 6799 as originally introduced in the House adequately protects the defendant's fifth amendment right against self-incrimination. The rule does not preclude use of statements made by a defendant during a court-ordered psychiatric examination. The statements may be relevant to the issue of defendant's sanity and admissible on that issue. However, a limiting instruction would not satisfy the rule if a statement is so prejudicial that a limiting instruction would be ineffective. Cf. practice under 18 U.S.C. 4244.

Rule 15(g)

Rule 15 deals with the taking of depositions and the use of depositions at trial. Rule 15(e) permits a deposition to be used if the witness is unavailable. Rule 15(g) defines that term.

The Supreme Court's proposal defines five circumstances in which the witness will be considered unavailable. The House version of the bill deletes a provision that said a witness is unavailable if he is exempted at trial, on the ground of privilege, from testifying about the subject-matter of his deposition. The Senate version of the bill, by cross reference to the Federal Rules of Evidence, restores the Supreme Court proposal.

The Conference adopts the Senate provision.

Rule 16

Rule 16 deals with pretrial discovery by the defendant and the government. The House and Senate versions of the bill differ on Rule 16 in several respects.

A. *Reciprocal vs. Independent Discovery for the Government.*—The House version of the bill provides that the government's discovery is reciprocal. If the defendant requires and receives certain items from the government, then the government is entitled to get similar items from the defendant. The Senate version of the bill gives the government an independent right to discover material in the possession of the defendant.

The Conference adopts the House provisions.

B. *Rule 16(a)(1)(A).*—The House version permits an organization to discover relevant recorded grand jury testimony of any witness who was, at the time of the acts charged or in the grand jury proceedings, so situated as an officer or employee as to have been able legally to bind it in respect to the activities involved in the charges. The Senate version limits discovery of this material to testimony of a witness who was, at the time of the grand jury proceeding, so situated as an officer or employee as to have been legally to bind the defendant in respect to the activities involved.

The conferees share a concern that during investigations, ex-employees and ex-officers of potential corporate defendants are a critical source of information regarding activities of their former corporate employers. It is not unusual that, at the time of their testimony or interview, these persons may have interests which are substantially adverse to or divergent from the putative corporate defendant. It is also not unusual that such individuals, though no longer sharing a community of interest with the corporation, may nevertheless be subject to pressure from their

former employers. Such pressure may derive from the fact that the ex-employees or ex-officers have remained in the same industry or related industry, are employed by competitors, suppliers, or customers of their former employers, or have pension or other deferred compensation arrangements with former employers.

The Conference also recognize that considerations of fairness require that a defendant corporation or other legal entity be entitled to the grand jury testimony of a former officer or employee if that person was personally involved in the conduct constituting the offense and was able legally to bind the defendant in respect to the conduct in which he was involved.

The Conference decided that, on balance, a defendant organization should not be entitled to the relevant grand jury testimony of a former officer or employee in every instance. However, a defendant organization should be entitled to it if the former officer or employee was personally involved in the alleged conduct constituting the offense and was so situated as to have been able legally to bind the defendant in respect to the alleged conduct. The Conference note that, even in those situations where the rule provides for disclosure of the testimony, the Government may, upon a sufficient showing, obtain a protective or modifying order pursuant to Rule 16(d)(1).

The Conference adopts a provision that permits a defendant organization to discover relevant grand jury testimony of a witness who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

(C) **Rules 16(a)(1)(E) and (b)(1)(C) (witness lists).**—The House version of the bill provides that each party, the government and the defendant, may discover the names and addresses of the other party's witnesses 3 days before trial. The Senate version of the bill eliminates these provisions; thereby making the names and addresses of a party's witnesses nondisclosable. The Senate version also makes a conforming change in Rule 16(d)(1). The Conference adopts the Senate version.

A majority of the Conference believe it is not in the interest of the effective administration of criminal justice to require that the government or the defendant be forced to reveal the names and addresses of its witnesses before trial. Discouragement of witnesses and improper contacts directed at influencing their testimony, were deemed paramount concerns in the formulation of this policy.

D. **Rules 16(a)(2) and (b)(2).**—Rules 16(a)(2) and (b)(2) define certain types of materials ("work product") not to be discoverable. The House version defines work product to be "the mental impressions, conclusions, opinions, or legal theories of the attorney for the government or other government agent." This is parallel to the definition in the Federal Rules of Civil Procedure. The Senate version returns to the Supreme Court's language and defines work product to be "reports, memoranda, or other internal government documents." This is the language of the present rule.

The Conference adopts the Senate provision.

The Conference note that a party may not avoid a legitimate discovery request merely because something is labelled "report", "memorandum", or "internal document". For example if a document qualifies as a statement of the defendant within the meaning of the Rule 16(a)(1)(A), then the

labelling of that document as "report", "memorandum", or "internal government document" will not shield that statement from discovery. Likewise, if the results of an experiment qualify as the results of a scientific test within the meaning of Rule 16(b)(1)(B), then the results of that experiment are not shielded from discovery even if they are labelled "report", "memorandum", or "internal defense document".

EFFECTIVE DATE

The House version provides that the effective date of the proposed amendments together with the further amendments made by this Act, is August 1, 1975. The Senate version provides that such effective date shall be December 1, 1975.

The conference adopts the Senate provision with a change.

The Conference intend that the amendments proposed by the Supreme Court, together with the amendments made by this Act shall, except as to Rule 11(e)(6), take effect on December 1, 1975. Section 2 of the Act as proposed by the Conference further delays the effective date of the rules changes proposed by the Supreme Court, which had been delayed to August 1, 1975, by Public Law 93-361. Until December 1, 1975, the rules presently in force shall apply. It is provided that Rule 11(e)(6) shall take effect on August 1, 1975.

JAMES R. MANN,

RAY THORNTON,

MARTIN A. RUSSO,

CHARLES E. WIGGINS,

HENRY J. HYDE

Managers on the Part of the House.

JOHN L. McCLELLAN,

PHILIP A. HART,

JAMES ABOUREK,

ROMAN L. HEUSKA,

HUGH SCOTT,

Managers on the Part of the Senate.

PERSONAL EXPLANATION

Mr. BALDUS. Mr. Speaker, on rollcall vote 431, S. 555, farm disaster loans conference report, and rollcall vote 437, H.R. 5900, economic rights of labor, I was absent because of official business of the House Agriculture Committee, taking the place of Chairman Ed Jones at the Dairy and Poultry Subcommittee field hearings in Burlington, Vt. Had I been present I would have voted yes for both of these bills.

THE LATE HONORABLE LESTER JOHNSON

The SPEAKER pro tempore (Mr. McFALL). Under a previous order of the House, the gentleman from Wisconsin (Mr. ZABLOCKI) is recognized for 60 minutes.

(Mr. ZABLOCKI) asked and was given permission to revise and extend his remarks.)

GENERAL LEAVE

Mr. ZABLOCKI. Mr. Speaker, I ask that all Members may have 5 legislative days in which to extend their remarks on the life character and public service of the late Honorable Lester Johnson.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. ZABLOCKI. Mr. Speaker, I have requested this special order to recognize the fine contributions which our former colleague, Lester Johnson of Wisconsin,

has made to his country. I am sure that all who were privileged to serve with Lester Johnson remember our late colleague with affection and respect. He served for 12 years in Congress from 1953 to 1965, and was an outstanding Member of Congress.

Our former colleague was born in 1901 in Brandon, Wis. After graduation from the University of Wisconsin Law School in 1941 he commenced practice in Black River Falls, Wis. A former LaFollette Progressive, Lester was elected as a Democrat to fill the vacancy caused by the death of Congressman Merlin Hull. This election made Lester the first Democratic Congressman in history to be elected in Wisconsin's old Ninth District. His victory was regarded as a political upset in the normally Republican district and many observers regarded Lester Johnson's victory as a repudiation of policies of the recently elected F. W. Conahan administration, especially those policies affecting farmers. Lester served in the House of Representatives for six terms and I was sorry to see him retire in 1964.

Many of the present Members of Congress remember Lester most affectionately for his warm, engaging personality, and for his efforts and genuine interest in helping with other people's problems. Because of his low-key approach, good judgment, and great knowledge, Lester was consulted by his colleagues for advice particularly on agricultural matters and many other issues which arose in Congress. There was nothing severe or solemn about Lester and he always had something pleasant to say, in the unassuming manner which endeared him to so many.

Lester prided himself on his record for doing what he thought was right even in the face of substantial criticism. And he prided himself on providing representation in every sense to his congressional district. When someone had a Federal problem, they knew Lester Johnson would try to help them. They knew that if they wrote to him, he would answer their correspondence. But, most of all, they knew that the basic philosophy of the area he served would be represented in Lester's contributions to public policy.

Lester's greatest accomplishments and the ones of which he was most proud, were those relating to the preservation and improvement of our environment. He was an ardent conservationist, in days when "ecology and environment" were not even a part of the legislative vocabulary. When historians look back and review the efforts on environmental quality in our era, Lester will certainly be considered one of the early crusaders to protect our natural systems, to control pollution, and to preserve our national heritage.

Had Lester Johnson's commitment to the environment not been so deeply ingrained we might not have accomplished some of our present-day environmental goals. He was instrumental in the enactment in 1961 of a measure to speed up acquisition of waterfowl areas under the 1929 Migratory Bird Conservation

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merce, one member designated by the Secretary of the Interior, and four members appointed by the President as designated by the National Governors' Conference. Such Board shall recommend the award of grants or loans upon a determination of net adverse impacts and following the procedures and criteria set forth in this section.

"(j) Nothing in this section shall be construed to modify or abrogate the consistency requirements of section 307 of the Coastal Zone Management Act.

"(k) The Secretary of Commerce shall, in addition to any financial assistance provided to, or available to, coastal states pursuant to any other subsection of this section, distribute grants annually in accordance with the provisions of this subsection. The moneys received under this subsection shall be expended by each State receiving such grants solely for the purpose of reducing or ameliorating adverse impacts resulting from the exploration for, or the development or production of, energy resources or resulting from the location, construction, expansion, or operation of a related energy facility and/or for projects designed to provide new or additional public facilities and public services which are related to such exploration, development, production, location, construction, expansion, or operation, except that such grants shall initially be designated by each receiving State to retire State and local bonds, if any, which are guaranteed under subsection (m) of this section; *Provided*, That, if the amount of such grants is insufficient to retire both State and local bonds, priority shall be given to retiring local bonds. Subject to the foregoing expenditure requirements, each coastal State shall be entitled to receive a grant under this subsection if such State is, on the first day of the fiscal year—

"(l) adjacent to Outer Continental Shelf lands on which oil or natural gas is being produced; or

"(2) permitting crude oil or natural gas to be landed in its coastal zone; *Provided*, That such crude oil or natural gas has been produced on adjacent Outer Continental Shelf lands of such State or on Outer Continental Shelf lands which are adjacent to another State and transported directly to such State. In the event that a State is landing oil or natural gas produced adjacent to another State, the landing State shall be eligible for grants under this subsection at a rate half as great as that to which it would be eligible in any given year if the oil were produced adjacent to the landing State. In the event that a State is adjacent to Outer Continental Shelf lands where oil or natural gas is produced, but such oil or natural gas is landed in another State, the adjacent State shall be eligible for grants under this subsection at a rate half as great as that to which it would be eligible in any given year if the oil or natural gas produced adjacent to that State were also landed in that State.

Such States shall become eligible to receive such automatic grants in the first year that the amount of such oil or natural gas landed in the State or produced on Outer Continental Shelf lands adjacent to the State (as determined by the Secretary) exceeds a volume of 100,000 barrels per day of oil or an equivalent volume of natural gas. There shall be allocated for this purpose from the revenues derived from Outer Continental Shelf leases sufficient funds to provide such States with grants in the amount of 20 cents per barrel or its equivalent during the first year, 15 cents per barrel or its equivalent during the second year, 10 cents per barrel, or its equivalent during the third year, and 8 cents per barrel or its equivalent during the fourth and all succeeding years during which oil or gas is landed in such a State or produced on Outer Continental Shelf lands adjacent to such a state: *Provided*, That (A) such funds shall not exceed \$100,000,000 for the fiscal year ending June

30, 1976; \$25,000,000 for the fiscal quarter ending September 30, 1976; \$100,000,000 for the fiscal year ending September 30, 1977; and \$100,000,000 for the fiscal year ending September 30, 1978; and (B) such funds shall be limited to payments for the first one and one-half million barrels of oil (or its gas equivalent) per day per State for the 10 succeeding fiscal years. The amount of such grants to each such State in any given year shall be calculated on the basis of the previous year's volume of oil or natural gas landed in the State or produced adjacent to the State. For the purposes of this section, one barrel of crude oil equals 6,000 cubic feet of natural gas.

"(l) There shall be allocated to the Coastal Energy Facility Impact Fund such revenues derived from Outer Continental Shelf leases not to exceed \$200,000,000 for the fiscal year ending June 30, 1976, not to exceed \$50,000,000 for the transitional fiscal quarter ending September 30, 1976, not to exceed \$200,000,000 for the fiscal year ending September 30, 1977, and not to exceed \$200,000,000 for the fiscal year ending September 30, 1978, as may be necessary, for grants and/or loans under this section, to remain available until expended. No more than 25 percent of the total amount appropriated to such fund for a particular fiscal year, not to exceed \$50,000,000 per year, shall be used for the purposes set forth in subsection (a) of this section.

"(m) The Secretary of Commerce is authorized, subject to such terms and conditions as the Secretary prescribes, to make commitments to guarantee and to guarantee against loss of principal or interest the holders of bonds or other evidences of indebtedness issued by a State or local government to reduce, ameliorate, or compensate the adverse impacts in the coastal zone resulting from or likely to result from the exploration for, or the development of production of, energy resources of the Outer Continental Shelf.

"(n) The Secretary of Commerce shall prescribe and collect a guarantee fee in connection with guarantees made pursuant to this section. Such fees shall not exceed such amounts as the Secretary of Commerce estimates to be necessary to cover the administrative costs of carrying out the provisions of this section. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

"(o) (1) Payments required to be made as a result of any guarantee pursuant to this section shall be made by the Secretary of the Treasury from funds hereby authorized to be allocated from the revenues derived from Outer Continental Shelf leases in such amounts as may be necessary for such purpose.

"(2) If there is a default by a State or local government in any payment of principal or interest due under a bond or other evidence of indebtedness guaranteed by the Secretary of Commerce pursuant to this section, any holder of such bond or other evidence of indebtedness may demand payment by the Secretary of Commerce of unpaid interest on and the unpaid principal of such obligation as they become due. The Secretary of the Treasury, upon investigation by the Secretary of Commerce, shall pay such amounts to such holder, unless the Secretary of Commerce finds that there was no default by the State or local government involved or that such default has been remedied. If the Secretary of Commerce makes a payment under this paragraph, the United States shall have a right of reimbursement against the State or local government involved for the amount of such payment plus interest at prevailing rates. Such right of reimbursement may be satisfied by the Secretary of Commerce by treating such amount as an offset against any revenues due or to become due to such State or local govern-

ment under section 308(k) of this Act, and the Attorney General, upon the request of the Secretary of Commerce, shall take such action as is, in the Secretary's discretion, necessary to protect the interests of the United States, including the recovery of previously paid funds that were not applied as provided in this Act. However, if the funds accrued by or due to the State in automatic grants under section 308(k) of this Act are insufficient to reimburse the Federal Government in full for funds paid under this section to retire either the principal or interest on the defaulted bonds, the Secretary of Commerce's right of reimbursement shall be limited to the amount of such automatic grants accrued or due. Funds accrued in automatic grants under section 308(k) of this Act subsequent to default shall be applied by the Secretary of Commerce toward the reimbursement of the obligations assumed by the Federal Government."

Mr. HOLLINGS. Mr. President, with Senator JOHNSTON, Senator STEVENSON, Senator JACKSON and the others on the floor, this is the amendment that was hammered out after the enactment of S. 586. It could well be that this amendment could be passed and S. 586 held up, or vice versa; but, to have a uniformity of treatment as to handling impacted funds, this is practically word for word, with technical amendments agreed to on both sides, I think, what we have already passed by a vote of about 75 to 12.

I submit the amendment.

Mr. METCALF. Mr. President, I wonder if the Senator from South Carolina will yield to me for a moment so that I may yield to the distinguished Senator from Nebraska on my time, for a conference report.

Mr. HOLLINGS. I yield.

Mr. HRUSKA. Mr. President, the conference report will be submitted by the chairman of the Subcommittee on Criminal Laws and Procedures, the Senator from Arkansas (Mr. McCLELLAN).

FEDERAL RULES OF CRIMINAL PROCEDURE AMENDMENTS ACT OF

Mr. McCLELLAN. Mr. President, I submit a report of the committee of conference on H.R. 6799, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. GARN). The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6799) to approve certain of the proposed amendments to the Federal Rules of Criminal Procedure, to amend certain of them, and to make certain additional amendments to those Rules, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the Congressional Record of July 28, 1975, at p. H7679.)

Mr. McCLELLAN. Mr. President, approval by the Senate of the conference

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report on H.R. 6799 will send to the President a measure that, in my judgement, considerably improves the Rules of Criminal Procedure proposed to the Congress by the Supreme Court on April 22, 1974. It also marks the first time that Congress has taken affirmative action concerning criminal rules submitted to it. The conferees recognized that strongly held opposing views were involved in a number of issues. In a spirit of compromise, I believe, these issues have been resolved by the conferees in such a way as to strengthen our criminal justice system.

Mr. President, one of those issues involves pretrial disclosure of witness lists. The conferees adopted the Senate version which deleted provisions for discovery of witness lists (rules 16(a)(1)(E) and (b)(1)(C)). As stated in the joint explanation statement of the committee of conference:

A majority of the conferees believe it is not in the interest of the effective administration of criminal justice to require that the government or defendant be forced to reveal the names and addresses of its witnesses before trial. Discouragement of witnesses and improper contacts directed at influencing their testimony, were deemed paramount concerns in the formulation of this policy.

Although it should be obvious, I want to emphasize that the policy choice was directly presented and positively resolved in favor of affording all possible protection and encouragement to witnesses in Federal criminal cases. This includes the ability of the prosecutor to assure a reluctant or fearful witness that his identity will not be divulged to the defendant prior to appearance at trial. Although there may be unusual cases involving fundamental fairness, the congressional decision on this issue should be taken as clear disapproval of the exercise of so-called inherent power by the courts to fashion local rules or individual orders calling for discovery of witnesses, see, for example, *United States v. Jackson*, 508 F. 2d 1001, 1006 (7th Cir. 1975) and cases cited therein, except insofar as such discovery may be required to effectuate a party's right to constitutional due process of law.

Mr. President, I might also comment on a compromise in proposed rule 12.2 (c). The conferees deemed it wise, in dealing with use of statements made by a defendant in the course of a psychiatric examination ordered by the court pursuant to that rule, to adopt language identical to 18 U.S.C. 4244, which reads in pertinent part:

... No statement made by the accused in the course of any examination into his sanity or mental competency . . . , whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding.

This amendment substantially enacts into the rule existing case law concerning the admissibility at trial of a defendant's inculpatory statements made during the course of a mental competency or sanity examination. Thus, while it is clearly not the intent of the rule to require a bifurcated trial in every case in which an accused's inculpatory statement bearing on the issue of his mental

responsibility is introduced at trial, the trial court may, within the "broad discretion" accorded it on this issue, consider the possible admissibility of such a statement in deciding whether or not to order a bifurcated trial where the accused presents substantial defenses both on the merits and the issue of responsibility, and the admission of his statement would substantially prejudice his defense on the merits. See *Harried v. United States*, 389 F.2d 281, 284 (D.C. Cir. 1967, opinion by Burger, J.) and *Higgins v. United States*, 401 F.2d 396 (D.C. Cir. 1968, opinion by Burger, J.).

Mr. President, I urge adoption of the conference report.

Mr. HRUSKA. Mr. President, I rise in support of the conference report on H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act of 1975, and urge its adoption.

The conference report represents a reasoned and balanced accommodation of the competing interests that necessarily come to clash in any reform of this nature: the interest in convicting the guilty and depriving them of the means to forestall justice; while at the same time providing the innocent with the wherewithal to effectively demonstrate their innocence. The Rules Amendment Act that has emerged from conference is, like the Federal Rules of Evidence, a great step forward in the continuing process of improvement of the quality of justice in Federal courts.

The basic amendments were transmitted to Congress by the Supreme Court on April 22, 1974, and embodied much hard work on the part of a distinguished advisory committee appointed under the auspices of the Chief Justice of the Supreme Court and the Judicial Conference of the United States, and on the part of the standing committee to whom the advisory committee reported. Both Houses of Congress then examined the amendments in detail, receiving additional comments from varied segments of the bench and bar. In some instances the two Houses, in the process of their respective deliberations, reached conclusions differing from each other and from the Supreme Court's amendments.

Finally, this month, the conference committee considered the matter, and reached accommodation between the House and the Senate versions.

In short, there was a partnership of effort that assured careful examination and reexamination at each stage, inspiring confidence that few important stones have been left unturned and that the resultant set of amendments are among the very best that could be devised.

Of the nine issues in controversy at the conference, three were resolved by the conference committee by adopting the Senate version. These were rule 15 (g), the definition of availability; rule 16 (a)(1)(E) and (b)(1)(C), pertaining to witness lists; and rule 16 (a)(2) and (b)(2), defining work product. Another three were resolved in accord with the House formulation. These were rule 4 (e)(3), relating to the manner of serving summonses; rule 11(c), relating to information to be furnished the defendant

by the judge concerning a guilty plea; and rule 16, dealing with reciprocal versus independent discovery for the Government. The remaining three issues were resolved with provisions that did not precisely mirror either the House or the Senate version; rule 11(e)(6), concerning certain pleas and statements, in which essentially the House position was accepted but with a narrowing along the lines of the Senate version; rule 12.2(c), concerning statements made during a court-ordered psychiatric examination, in which an earlier version of the House provision, standing roughly midway between the House and the Senate versions, was adopted; and rule 16(a)(1)(A), concerning discovery of former employees' grand jury testimony by a corporate defendant, on which a position between those of the House and the Senate versions was adopted.

Mr. President, I would like to conclude with a few words about timing. When Congress temporarily suspended the Supreme Court's version of the amendments to the Rules of Criminal Procedure in order to examine them more closely, Congress suspended their original effective date for 1 year until August 1, 1975. The intent of the present legislation is to continue present law—that is, the existing Rules of Criminal Procedure, without the Supreme Court's amendments and without the congressional amendments—until December 1, 1975, and to avoid the Supreme Court's amendments taking effect for any period of time before then. On December 1, 1975, the present legislation is intended to come into effect. It provides for the Supreme Court amendments, as themselves amended by Congress, to take effect on that date.

Rule 11(e)(6) is an exception. As set forth in the legislation before us, it is to take effect on August 1, 1975. In other words, the present rules will govern until December 1, 1975, at which time the provisions of the legislation presently under consideration will take effect—except that rule 11(e)(6) in that legislation is by the terms of the legislation to take effect August 1, 1975.

The reason for the special date for rule 11(e)(6), relating to certain pleas and statements, is that it is intended that rule 410 of the Federal Rules of Evidence, dealing with the same matter, shall never come into effect. At the time Congress enacted rule 410, it will be remembered, it was expressly made subject to being overruled by final congressional action on the then-pending criminal procedure rule 11(e)(6). A date of August 1, 1975, was prescribed within rule 410 as rule 410's effective date, a date 1 month later than the effective date of the other Rules of Evidence. It was contemplated that by August 1, 1975, Congress would have acted finally on rule 11(e)(6), which rule 410 expressly provided would supplant rule 410.

In closing, let me again express my support for the pending legislation and urge its immediate enactment.

The PRESIDING OFFICER. Without objection, the conference report is agreed to.

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RE: U.S.A. v. FRANK S. CANNONE, et al.

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:
CITY OF SYRACUSE)

EVERETT J. REA , being duly sworn, deposes and says:

That he is associated with Spaulding Law Printing Company of Syracuse, New York, and is over twenty-one years of age.

That at the request of JAMES M. SULLIVAN, JR., United States Attorney, Attorney for Appellant,
he personally served ~~three~~ ^{two (2)} copies of the printed ~~Request~~ [Brief], and one (1) copy of Supplemental [Appendix] of the above-entitled case addressed to:

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Everett J. Rea

Everett J. Rea

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Russell D. Hay
Commissioner of Deeds

cc: James M. Sullivan, Jr., Esq.

